and there seems to be no sufficient reason why the proper and ordinary meaning should not be given to the word "eligible" as though it had read "no person shall be qualified to be elected." That eligibility applies to the time of election and not to the time of entering upon the duties of the office is sustained in the following cases: *Minnesota* v. *Smith,* 3 Minn. 164, 74 Am. Dec. 749; *State* v. *McMillan,* 23 Neb. 385, 36 N. W. 587; *State* v. *Boyd,* 31 Neb. 682, 48 N. W. 739; *State* v. *Moores,* 52 Neb. 770, 73 N. W. 299; *Nevada* v. *Clark,* 3 Nev. 566; *State* v. *Clark,* 21 Nev. 333; *State* v. *Lake,* 16 R. I. 511, 17 Atl. 552; *People* v. *Board of Canvassers,* 129 N. Y. 360, 29 N. E. 345; *Searcy* v. *Grow,* 15 Cal. 121; *People* v. *Leonard,* 73 Cal. 230, 14 Pac. 583; *Sheehan* v. *Scott,* 145 Cal. 684, 79 Pac. 350 (but see *Ward* v. *Crowell,* 142 Cal. 587, 76 Pac. 491); *Finklea* v. *Farish,* 150 Ala. 230, 49 S. 366; *Roane* v. *Matthews,* 75 Miss. 94, 21 S. 665; *Rex ex rel Zimmerman* v. *Steele,* 5 Ont. L. Rep. 565; *Rex ex rel O'Donnell* v. *Brownfield,* 5 Ont. L. Rep. 596; *Queen* v. *Eddowis,* 1 E. & E. 330; *Queen* v. *Coakes,* 3 E. & B. 248. But there seems to be an equal amount of authority sustaining the view that eligibility applies to the time of entering office and not to the time of election. In *Bradfield* v. *Avery,* 16 Idaho, 769, 102 Pac. 687, 23 L. R. A. (N. S.) 1228, the leading case in support of this view, it was said, "Eligible to office clearly implies the qualification or capacity to hold the office. While it may mean capable of being chosen yet where such a meaning is not clearly indicated, we think naturally it applies to one's fitness to hold the office." The case is supported by *Smith* v. *Moore,* 90 Ind. 294; *Brown* v. *Gobin,* 122 Ind. 113, 23 N. E. 519; *Shuck* v. *State ex rel Cope,* 136 Ind. 63, 35 N. E. 993; *Hoy Major* v. *State,* 168 Ind. 506, 81 N. E. 509; *Commonwealth* v. *Pyle,* 18 Pa. 519; *De Turk* v. *Commonwealth,* 129 Pa. St. 151, 18 Atl. 757; *State* v. *Breuer,* 235 Mo. 240, 138 S. W. 515; *Prevett* v. *Beckford,* 26 Kan. 52; *Damaree* v. *Scates,* 50 Kan. 275, 32 Pac. 1123, 20 L. R. A. 97, 34 Am. St. Rep. 113; *People* v. *Hamilton,* 24 Ill. App. 609; *Kirkpatrick* v. *Brownfield,* 97 Ky. 558, 31 S. W. 137, 29 L. R. A. 705, 59 Am. St. Rep. 422; *State* v. *Van Beek,* 87 Ia. 569; 54 N. W. 525, 19 L. R. A. 622, 43 Am. St. Rep. 397; *State* v. *Breckenridge,* (Okla.) 126 Pac. 806; *Schuet* v. *Murray,* 28 Wis. 101; *State* v. *Trumpf,* 50 Wis. 103. In reference to Federal officers McCREARY, on ELECTIONS 4th Ed. § 346 states, "It has been the constant practice of the congress of the United States to admit persons to seats in that body who were ineligible at the date of their election but whose disabilities had been subsequently removed." But when the term of office held does not expire until after the office to which the party has been elected begins the elected party is ineligible to take even though he resigns his first office. *Waldo* v. *Wallace,* 12 Ind. 569; *Gulick* v. *New,* 14 Ind. 93.

SALES—MONOPOLIES—LIABILITY OF PURCHASER FOR THE REASONABLE VALUE OF THE GOODS.—Plaintiff sold to defendant patterns under a two-year contract by which defendant agreed to handle no other patterns and to sell at prices to be fixed from time to time by the plaintiff. To a declaration upon account of goods sold and delivered defendant pleaded that the contract came under §§ 5002-3 of the Mississippi Code. This statute, after defining

what restraint of trade shall make a concern a "trust," provides that a "contract for any purpose relative to the business of such a trust is void." *Held*, that conceding the contract to be within the statute, the defendant was still liable for the value of the goods. *McCall* v. *Hughes*, (Miss. 1912) 59 So. 794.

In *Continental Wall Paper Co.* v. *Voight*, 212 U. S. 227, under the Sherman Act making contracts in restraint of trade "illegal" the plaintiff was not allowed to recover on an account made on the provisions of a contract in restraint of trade. The court intimated that it would not allow an action to recover the value of the goods sold to the defendant. Some states have anti-trust laws providing that the purchaser of goods from a "trust" shall not be liable for the price or payment thereof, and that he may recover back anything he pays the trust for the goods. Such statutes of course defeat any recovery by the trust. *Columbia Carriage Co.* v. *Hatch*, 19 Tex. Civ. App. 120, *Frank A. Menne Factory Co.* v. *Harback*, 85 Ark. 278. For another aspect of the situation see *Wilder Mfg. Co.* v. *Corn Products Co.* (Ga. 1912)) 75 S. E. 918, noted in 11 MICH. L. REV. 170.

THEATER—EJECTION—TORT OR CONTRACT?—Plaintiff had purchased a ticket and entered defendant's theater. Defendant ejected him. Two counts in the declaration were in tort. *Held*, that contract, not tort, was the proper action. *W. W. V. Co., Inc.* v. *Black*, (Va. 1912), 75 S. E. 82.

The weight of authority is that the ticket holder has merely a revocable license, for the wrongful discontinuance of which his only remedy is in contract. *Shubert* v. *Nixon Amusement Co.*, (N. J. 1912), 83 Atl. 369; *Taylor* v. *Cohn*, 47 Ore. 538, 84 Pac. 388; *Horney* v. *Nixon*, 213 Pa. 20, 61 Atl. 1088, 1 L. R. A. (N. S.) 1184, 110 Am. St. Rep. 520; 21 ENCY. PL. & PR. 647. The leading case on this view is *Wood* v. *Leadbitter*, 13 M. & W. 838, 14 L. J. EX. 161, 16 E. R. C. 49. But it has been held that once the ticket holder has entered, tort will lie for wrongful ejection. *Smith* v. *Leo*, 92 Hun. 242, 36 N. Y. Supp. 949; *Weber Stair Co.* v. *Fisher*, (Ky. 1909), 119 S. W. 195. See also 4 MICH. L. REV. 318.

TRIAL—INSTRUCTIONS—PREJUDICIAL INSTRUCTION NOT CURED BY CORRECT ONE.— In an action based on the fraud of defendant company while acting as agent for the plaintiffs, the court erroneously instructed the jury, in effect, that it was necessary for the plaintiffs to prove only the fact of agency, in order to make a prima facie case. In another instruction the Court correctly charged the jury that "the burden is upon plaintiffs to sustain their allegations of fraud and deceit by clear and satisfactory proof." *Held*, that the latter instruction did not cure the former one. *Alpha Realty & Rental Co.* v. *Randolph et al.* (Colo. 1912) 127 Pac. 245.

The court said, "The authorities are fairly harmonious that one instruction clearly prejudicial may not be cured by another instruction laying down the correct rule." The case is sustained by the clear weight of authority. The general rule seems to be that conflicting or contradictory instructions furnish no correct guide to the jury and the giving thereof is erroneous. 38 CYC. 1604. Some cases, apparently in conflict with this rule, declare that